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January 12, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 23, 2004

Case Number: TSO-0112

This decision concerns the eligibility of XXX XXX XXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The local Department of Energy security office (the LSO) suspended the Individual's access authorization under the provisions of Part 710. This decision considers whether, on the basis of the evidence and testimony in this proceeding, the Individual's access authorization should be restored.¹ For the reasons stated below, the Individual's access authorization should be restored.

I. BACKGROUND

The present case concerns an Individual who has been diagnosed with Alcohol Abuse. The Individual and both of the expert witnesses who testified at his hearing agree that this diagnosis is accurate. Transcript of Hearing (Tr.) at 13-18, 51, 73 and 77. Both expert witnesses also agree that the Individual is now sufficiently reformed and rehabilitated to resolve the security concerns raised by his alcohol abuse.

The events leading to this proceeding began when DOE officials received information indicating that the Individual had been arrested for Driving While Intoxicated (DWI). A personnel security interview (PSI) of the Individual was conducted in which the Individual admitted the DWI arrest.

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

The Individual was then asked to submit to an examination by a DOE consultant psychiatrist (the DOE Psychiatrist). On June 13, 2003, the DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. Tr. at 7. In addition to conducting this examination, the DOE Psychiatrist reviewed selected portions of the Individual's security file and selected medical records. Tr. at 8. On June 18, 2003, the DOE Psychiatrist issued a report in which she stated that the Individual meets the criteria for Alcohol Abuse, in Early Full Remission, set forth in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR). DOE Psychiatrist's Report of Examination at 11. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated and reformed to resolve the security concerns raised by his Alcohol Abuse. The DOE Psychiatrist noted that the Individual had completed 50 hours of a professionally led substance abuse treatment program, as well as a court-mandated educational DWI program. *Id.* at 12. Nevertheless, the DOE Psychiatrist opined that in order to establish *rehabilitation* from his Alcohol Abuse, the Individual must:

1. [Attend Alcoholics Anonymous (AA) meetings] two times a week for at least six months, attain and maintain AA sponsorship for six months and undergo a minimum of six follow-up breath alcohol tests during the next 12 months, and
2. [Attend] individual alcohol and drug counseling for at least once a month for six months to improve insight and prognosis.

DOE Psychiatrist's Report of Examination at 12. The DOE Psychiatrist opined that in order to establish *reformation* from his Alcohol Abuse, the Individual must either:

1. [Attend one of the two aftercare programs listed above and maintain] 1 year of absolute sobriety . . . [or]
2. [Maintain] 1.5 years of absolute sobriety . . . [in the absence of a treatment program].

DOE Psychiatrist's Report of Examination at 12.

After receipt of the DOE Psychiatrist's Report, the LSO initiated an administrative review proceeding. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter alleges that the Individual has "An illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h). The Notification Letter also alleges that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer.

At the hearing, the DOE Office presented one witness: the DOE Psychiatrist. The Individual presented six witnesses: four friends and co-workers, his wife and his Counselor, who treats him on a regular basis. The Individual also testified on his own behalf.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

A reliable diagnosis of alcohol abuse raises significant security concerns under Criteria J and H. In the present case, the Individual does not dispute this diagnosis. Therefore, the local office properly invoked these criteria.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (1998) (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in determining whether an individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). In the present case, the Individual does not dispute the DOE Psychiatrist's diagnosis of alcohol abuse. Therefore, the only issue before me is whether the Individual has submitted sufficient evidence of his rehabilitation or reformation to resolve the security concerns raised by his alcohol abuse.

Two expert witnesses testified at the hearing and both experts agreed that the Individual has been

sufficiently reformed and rehabilitated to resolve the security concerns raised by his alcohol abuse. It is important to note that, by the time of the hearing, the Individual had taken a number of important steps in order to address his alcohol abuse. Specifically, the record indicates that the Individual had successfully completed an intensive outpatient treatment program. In addition, the Individual has been obtaining counseling from a Licenced Professional Counselor (the Counselor) on at least a bi-weekly basis for over six months. Tr. at 45. Most importantly, the record indicates that the Individual has abstained from using alcohol since May 2003. ² Tr. at 76.

The Counselor testified at the Hearing. His testimony indicated that he had been providing counseling services to the Individual for approximately six months. Tr. at 46. The Counselor testified that he has generally seen the Individual on a weekly basis. Tr. at 45. The Counselor further testified that the Individual has abstained from using alcohol for at least a year and a half. Tr. at 46. The Counselor testified that he has seen the Individual's motivation to abstain from the use of alcohol change from an external basis to an internal basis during his six months of therapy. Tr. at 47-48, 55. The Counselor noted that the Individual has moved through his initial defensiveness and gained insight into his behavior and recognized how it has impaired him. Tr. at 45, 55. The Counselor further noted that the Individual's life and marriage had improved with his sobriety. Tr. at 48. Finally, the Counselor testified that he considered the Individual's chances of avoiding a relapse to be very good. Tr. at 48.

The DOE Psychiatrist testified that at the time that she had prepared her report, in July of 2003, she was convinced that while the Individual was abstaining from using alcohol, he had not recovered from his alcohol abuse. Tr. at 18. The DOE Psychiatrist testified that, at that time, the Individual had only abstained from the use of alcohol for a period of two months. Tr. at 18. In addition, the DOE Psychiatrist felt the Individual was exhibiting only minimal insight at the time. Tr. at 18. At the hearing, the DOE Psychiatrist observed the testimony of the Individual and the other witnesses, including the Counselor and the Individual's wife of five and a half years. After the testimony of the Individual and the other witnesses had concluded, the DOE Psychiatrist was called back to the stand. At this point the DOE Psychiatrist testified

I'm pleased to hear that he has followed the treatment recommendations, and a little bit late, but he definitely caught up with it. So I think that he has satisfied what I have initially put out as adequate evidence of reformation in terms of following the rehabilitation recommendation, as well as the recommendations of the length of time to be abstinent. Therefore, by following those recommendations, he adequately meets my definition of rehabilitation and reformation at this time.

Tr. at 108.

In summary, both expert witnesses have testified that the Individual (1) is properly diagnosed with

²At the time of the Hearing, the Individual had abstained from using alcohol for a period of 16 months.

alcohol abuse, (2) is in full remission, and (3) has shown he is rehabilitated and reformed. Accordingly, he has successfully resolved the security concerns raised by his alcohol abuse.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criteria J and H. Therefore, the Individual has demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the Individual's access authorization should be restored at this time. The LSO may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: January 12, 2005